

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

TAMMARA PETTY, o/b/o T.A.P.N.,)	Case No.: 4:21 CV 33
)	
Plaintiff)	
)	
v.)	JUDGE SOLOMON OLIVER, JR.
)	
COMMISSIONER OF SOCIAL)	
SECURITY ADMINISTRATION,)	
)	
Defendant)	<u>ORDER OF REMAND</u>

Defendant, the Commissioner of Social Security Administration, denied Plaintiff Tammara Petty's application for Supplemental Security Income, on behalf of her minor child T.A.P.N. ("T.A.") Plaintiff sought judicial review of the Commissioner's decision, asserting that the Administrative Law Judge's ("ALJ") finding—that T.A. did not possess a disability as defined in the Social Security Act, from December 28, 2018 through the date of the decision on June 8, 2020—was not supported by substantial evidence, and that the ALJ should have found that T.A. had marked limitations in interacting and relating to others as supported by the record and opinion evidence. (Pl.'s Br. at PageID #898, ECF No. 16.) The Commissioner filed a Response Brief opposing Plaintiff's arguments, and Plaintiff subsequently filed a Reply Brief. (ECF Nos. 18, 19.) Pursuant to Local Rule 72.2(b)(1), the court referred the case to Magistrate Judge Amanda M. Knapp ("Magistrate Judge" or "Judge Knapp") to prepare a Report and Recommendation ("R & R").

Judge Knapp submitted a R & R on April 20, 2022, recommending that the Commissioner's final decision be vacated and that the case be remanded, pursuant to 42 U.S.C. § 405(g), sentence

four, for further proceedings consistent with the R&R. (R&R at PageID #949, ECF No. 20.) On appeal, Judge Knapp considered whether the ALJ's finding "that T.A.'s limitations in interacting and relating to others were "less than marked" was supported by substantial evidence, and more specifically whether the ALJ mischaracterized or improperly omitted evidence in support of the challenged finding." (*Id.* at PageID #970.) In addressing that inquiry, Judge Knapp first noted that the ALJ's decision limited the discussion of T.A.'s medical and school records—which shed light on whether T.A.'s conditions were "less than marked" and numbered over 500 pages—to minimum citations in support of the ALJ's findings, which totaled merely two pages. (*Id.* at PageID #972.) The R & R found that the ALJ's limited analysis lacked any substantive discussion of T.A.'s intervention treatments and findings, and that the ALJ's discussion of T.A.'s psychological evaluation was "summary and cursory". (*Id.*) Further, the R & R found that, "the ALJ's discussion of the questionnaire responses of T.A.'s teachers in 2020 was selective, leaving out significant findings and opinions that were relevant to the analysis challenged in this appeal." (*Id.*)

Although the Commissioner identified two portions of the ALJ's analysis that in his opinion justify the ALJ's decision, the R & R concluded that the ALJ failed to consider relevant evidence past the final state agency consultants' review in October 2019, which directly addressed the question of whether T.A.'s conditions were "less than marked", and detailed material changes from the state agency's review. (*Id.* at PageID #973.) The R & R highlights the information that the ALJ failed to consider and states that, "[n]one of the evidence outlined above was discussed in connection with the ALJ's finding the T.A. had "less than marked" limitations in the domain of interacting and relating to others, and none was considered by the state agency consultants." (*Id.* at PageID #975.) Finally, the R & R notes that the Commissioner sought to support the ALJ's decision by discussing

facts not explicitly outlined in the ALJ's decision. However, that information was rejected by the Magistrate Judge because they were not articulated by the ALJ and post hoc rationalizations are impermissible. (*Id.* at PageID #976.) Accordingly, because Judge Knapp found that the ALJ decision lacked substantial evidence to support the lack of disability finding, the R & R recommends that the decision be remanded for further proceedings.

Neither party submitted objections, which were due by May 4, 2022. Accordingly, this matter is ripe for review.

The court finds, after careful *de novo* review of the R & R and all other relevant documents in the record, that the Magistrate Judge's conclusions are fully supported by the record and controlling case law. Accordingly, the court adopts as its own Judge Knapp's R & R (ECF No. 20). Accordingly, the court finds that the ALJ decision lacked substantive evidence to support the functional equivalent finding. The court hereby vacates the decision of the Commissioner and remands the case, pursuant to 42 U.S.C. § 405(g), sentence four, for further proceedings consistent with the R & R.

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

June 29, 2022